

workers compensation law would apply to any work-related injury. Consequently, the respondent requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

It is undisputed claimant was hired in Kansas City, Kansas, on June 20, 2000, as a truck driver for respondent. His dispatch office is in McPherson, Kansas. Claimant departs with loads from Kansas and then returns to Kansas. It is further undisputed claimant was injured in a fall on June 8, 2001, while he was in Chicago, Illinois. Claimant was delivering cargo and fell down an elevator shaft injuring his knees, shoulder and neck. Respondent provided medical care as well as temporary total disability benefits pursuant to the Act.

When hired claimant signed an employment contract which provided in part:

The EMPLOYEE also agrees that Worker's Compensation benefits, when applicable, are governed by the laws of the state of Indiana.¹

The claimant also signed an agreement which further provided in pertinent part:

The laws of the State of Indiana, including the Indiana Workers Compensation Act and its benefits, shall apply to the settlement of any claim arising out of any job related death, injury, or illness of the Employee.²

The Act confers jurisdiction in some cases where the injury is sustained outside the state. The two provisions that confer Kansas jurisdiction are (1) if the principal place of employment is within the state, or (2) the contract of employment was made within the state, unless the contract specifically provides otherwise.³

K.S.A. 44-506 provides:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also

¹ P.H. Trans. (May 8, 2003), Resp. Ex. 1.

² Ibid.

³ *Abbey v. Cleveland Inspection Services, Inc.*, 30 Kan. App. 2d 114, 41 P.3d 297 (2002).

to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

Both exceptions contained in K.S.A. 44-506 are applicable to the fact situation in this case. It is undisputed that the contract of employment was made in Kansas and that fact would make the Kansas Act applicable. However, the claimant's contract specifically provided that the workers compensation law of Indiana would control work-related injuries. When claimant was hired he also voluntarily signed an agreement to be subject to the workers compensation laws of the state of Indiana for work-related injuries while he was employed by respondent. The Board concludes those agreements are binding on claimant and would ordinarily vest jurisdiction in Indiana and not in Kansas.⁴

However, K.S.A. 44-506(1) provides that Kansas has jurisdiction for injuries sustained outside the state where the principal place of employment is within the state. Although claimant drove throughout the United States, he picked up his initial load in Kansas and at the end of the run would return to Kansas. The dispatch office was in McPherson, Kansas, and claimant received instructions from McPherson, Kansas, such as when dispatched or regarding changes in route. In essence, respondent's office in McPherson, Kansas, was his home base. In *Knelson*,⁵ the base of claimant's employment was Wichita, Kansas, and he traveled from that location to other states to play hockey games. The Court of Appeals held that since the claimant's principal place of employment was Wichita, Kansas, the Kansas Act applied to the parties. Likewise in the instant case, the claimant's base of employment, and therefore his principal place of employment, is the McPherson, Kansas, office. The Board concludes that this evidence is sufficient to establish Kansas as the principal place of employment.

Consequently, Kansas has jurisdiction for the injuries sustained outside the state because claimant's principal place of employment is within the state. The question becomes, therefore, whether the contract which was also made in Kansas, negates Kansas jurisdiction because the contract as well as the agreement subject claimant to the workers compensation laws of the state of Indiana for work-related injuries.

⁴ *Shields v. K.A.T. Transportation*, ___ Kan. App. 2d ___, 53 P.3d 1242 (2002), *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 3 P.3d 551 (2000).

⁵ *Knelson v. Meadowlanders, Inc.*, 11 Kan. App. 2d 696, 732 P.2d 808 (1987).

A literal reading of K.S.A. 44-506 leads to the conclusion that the specific waiver of Kansas jurisdiction is only applicable to subsection 2, that is, in those instances where Kansas jurisdiction is obtained because the contract of employment was made in this state. The first exception, where the principal place of employment is in Kansas, contains no such waiver provision. Furthermore, the provisions of the Act are to be liberally construed for the purpose of bringing employers and employees within its provisions to provide protection of the Act to both.⁶

According to Professor Larson:

Express agreement between employer and employee that the statute of a named state shall apply is ineffective either to enlarge the applicability of that state's statute or to diminish the applicability of the statutes of other states. Whatever the rule may be as to questions involving commercial paper, interest, usury and the like, the rule in workers' compensation is dictated by the overriding consideration that compensation is not a private matter to be arranged between two parties; the public has a profound interest in the matter which cannot be altered by any individual agreements. This is most obvious when such an agreement purports to destroy jurisdiction where it otherwise exists; practically every statute has emphatic prohibitions against cutting down rights or benefits by contract. The only exception occurs under several statutes which explicitly permit the parties to agree that the local statute shall not apply to out-of-state injuries.⁷

The Act applies in this case because claimant established that his principal place of employment was in Kansas. And because jurisdiction otherwise exists, just as it would if the accident had happened within the state, the choice of law provision in the contract cannot be used to destroy such jurisdiction. Accordingly, the decision of the ALJ is reversed.

Because the ALJ concluded Kansas did not have jurisdiction, there were no factual findings made by the ALJ on the issues raised by claimant and respondent at the preliminary hearing. Therefore, in the absence of findings by the ALJ, this matter should be remanded to the ALJ for findings and conclusions on those issues and any other remaining issues.

AWARD

WHEREFORE, it is the finding, of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 5, 2003, is reversed and the matter remanded to the Administrative Law Judge for a determination of the remaining issues.

⁶ *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P. 2d 258 (1999).

⁷ 9 *Larson's Workers' Compensation Law* § 143.07.

IT IS SO ORDERED.

Dated this _____ day of August 2003.

BOARD MEMBER

- c: Bradley A. Pistotnik, Attorney for Claimant
 Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
 Nelsonna Potts Barnes, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director